

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

FILED
U.S. DISTRICT COURT
INDIANAPOLIS DIVISION
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SOUTHERN DISTRICT
OF INDIANA
LAURA A. BRIGGS
CLERK

PRO-GARD PRODUCTS, LLC

Plaintiff,

vs.

PP USA, INC.
d/b/a PATRIOT PRODUCTS USA,
PATRIOT ENTERPRISES USA, and
PATRIOT ENTERPRISES USA, INC.

Defendant.

1:06-cv-0140-DFH-VSS
Civil Action No.

COMPLAINT

Plaintiff, Pro-Gard Products, LLC, for its Complaint against defendant, PP USA, Inc. d/b/a Patriot Products USA, Patriot Enterprises USA, and Patriot Enterprises USA, Inc., alleges and states:

I. PARTIES AND JURISDICTION

1. This is an action for patent infringement which arises under the patent laws of the United States, Title 35, United States Code. Jurisdiction in this Court is based on 28 U.S.C. §§ 1331 and 1338(a). Venue is proper in this judicial district under 28 U.S.C. §§ 1391(b) and (c) and 1400.

2. Plaintiff, Pro-Gard Products, LLC ("Pro-Gard") is an Indiana corporation having its principal place of business in Indianapolis, Indiana.

3. Upon information and belief, defendant, PP USA, Inc. d/b/a Patriot Products USA, Patriot Enterprises USA, and Patriot Enterprises USA, Inc. ("PP USA"), is an Indiana corporation having its principal place of business in Noblesville, Indiana.

A. Pro-Gard's United States Patent No. 6,827,382

4. Pro-Gard is the assignee¹ of United States Patent No. 6,827,382 ("the '382 Patent"), entitled "Vehicle Partition," which duly and legally issued on December 7, 2004. A copy of the '382 Patent is attached hereto as Exhibit A.

5. Pro-Gard makes and sells, in the United States, vehicle partitions embodying the invention of the '382 Patent. Pro-Gard's vehicle partitions have enjoyed a widespread and favorable reception in the marketplace. The '382 Patent, as well the invention covered thereby, has been and is now of value to Pro-Gard and has achieved commercial success.

B. Pro-Gard's United States Patent No. 6,905,153

6. Pro-Gard is also the assignee² of United States Patent No. 6,905,153 ("the '153 Patent"), entitled "Push Bumper," which duly and legally issued on June 14, 2005. A copy of the '153 Patent is attached hereto as Exhibit B.

7. Pro-Gard makes and sells, in the United States, push bumpers embodying the invention of the '153 Patent. Pro-Gard's push bumpers have enjoyed a widespread and

¹ The '382 Patent is a division of United States Patent No. 6,669,259 ("the '259 Patent"), which duly and legally issued on December 30, 2003. Copies of the original assignment documents and the Notice of Recordation of Assignment from the United States Patent and Trademark Office acknowledging the assignment of the '259 Patent from the named inventors (Kurt R. Murray and Jeffrey T. Bounds) to Pro-Gard Industries, L.P. are attached hereto as Exhibit C. Any assignment of the "parent" '259 Patent also acted to assign its divisional "child," the '382 Patent. *Ex Parte Gilbert*, 112 U.S.P.Q. (BNA) 339, 340 (Pat. Office Supervisory Exam'r 1954); U.S. Pat. & Trademark Office, U.S. Dep't of Commerce, Manual of Patent Examining Procedure § 306 (8th ed., rev. 4, 2005). Thus, the '382 Patent was assigned to Pro-Gard Industries, L.P. concurrently with the assignment of the '259 Patent. Copies of the original assignment documents and the Notice of Recordation of Assignment from the United States Patent and Trademark Office acknowledging the assignment of the '382 Patent from Pro-Gard Industries, L.P. to Pro-Gard Products, LLC are attached hereto as Exhibit E.

² Copies of the original assignment documents and the Notice of Recordation of Assignment from the United States Patent and Trademark Office acknowledging the assignment of the '153 Patent application (serial no. 10705485) from the named inventors (Kurt R. Murray, Ben Muilenburg, and Jeffrey T. Bounds) to Pro-Gard Industries, L.P. are attached hereto as Exhibit D. Copies of the original assignment documents and the Notice of Recordation of Assignment from the United States Patent and Trademark Office acknowledging the assignment of the '153 Patent from Pro-Gard Industries, L.P. to Pro-Gard Products, LLC are attached hereto as Exhibit E.

favorable reception in the marketplace. The '153 Patent, as well the invention covered thereby, has been and is now of value to Pro-Gard and has achieved commercial success.

II. PATENT INFRINGEMENT AGAINST PP USA

A. PP USA Infringes the '382 Patent

8. Upon information and belief, PP USA has infringed and is continuing to infringe the '382 Patent in this judicial district and elsewhere throughout the United States by making, using, offering to sell, and/or selling vehicle partitions that embody the invention claimed in the '382 Patent, by actively inducing others to infringe the '382 Patent, and by contributing to the infringement of the '382 Patent, all without authority or license from Pro-Gard.

B. PP USA Infringes the '153 Patent

9. Upon information and belief, PP USA has infringed and is continuing to infringe the '153 Patent in this judicial district and elsewhere throughout the United States by making, using, offering to sell, and/or selling push bumpers that embody the invention claimed in the '153 Patent, by actively inducing others to infringe the '153 Patent, and by contributing to the infringement of the '153 Patent, all without authority or license from Pro-Gard.

C. Willful Infringement by PP USA

10. Upon information and belief, PP USA has willfully infringed both the '382 Patent and the '153 Patent, and this is an "exceptional case" within the meaning of 35 U.S.C. § 285

D. Damages Resulting from PP USA's Infringements

11. As a result of PP USA's infringements of both the '382 Patent and the '153 Patent, Pro-Gard has been damaged in an amount to be determined at trial and has suffered and will continue to suffer irreparable injury unless PP USA is enjoined.

III. PRAYER FOR RELIEF

WHEREFORE, Plaintiff, Pro-Gard Products, LLC, respectfully requests that this Court enter judgment in its favor, and against defendant, PP USA, Inc., as follows:

- A. That the '382 Patent is valid, enforceable and infringed by defendant;
- B. That defendant, its directors, officers, employees, agents, servants, successors, subsidiaries, assigns, attorneys, and all other persons acting in privity, concert, or participation with it or under its authority, be preliminarily and permanently enjoined from making, using, offering for sale, and selling infringing vehicle partitions and from otherwise infringing the '382 Patent, actively inducing infringement of the '382 Patent, and contributing to the infringement of the '382 Patent;
- C. That the '153 Patent is valid, enforceable and infringed by defendant;
- D. That defendant, its directors, officers, employees, agents, servants, successors, subsidiaries, assigns, attorneys, and all other persons acting in privity, concert, or participation with it or under its authority, be preliminarily and permanently enjoined from making, using, offering for sale, and selling infringing push bumpers and from otherwise infringing the '153 Patent, actively inducing infringement of the '153 Patent, and contributing to the infringement of the '153 Patent;
- E. For an award to plaintiff of the damages and profits ascertained, together with interest and costs, in accordance with 35 U.S.C. § 284;
- F. That plaintiff be awarded treble damages pursuant to 35 U.S.C. § 284;
- G. That plaintiff be awarded its reasonable attorneys' fees pursuant to 35 U.S.C. § 285; and,
- H. For such other and further relief as the Court deems just and proper.

IV. JURY DEMAND

Plaintiff, Pro-Gard Products, LLC, demands trial by jury on all issues in this case other than its request for injunctive relief.

DATED: 1/26/06

Respectfully Submitted,



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